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Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

Gibraltar

Working paper prepared by the Secretariat

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I. General[1]

1. Gibraltar is a Non-Self-Governing Territory administrated by the United Kingdom of Great Britain and Northern Ireland. The Territory is a narrow peninsula extending southward from the south-west coast of Spain, to which it is connected by an isthmus about 1.6 kilometres long. The Spanish port of Algeciras lies 8 kilometres across the bay to the west; the continent of Africa is situated 32 kilometres across the Strait of Gibraltar to the south. According to the administering Power, the area of Gibraltar is 5.8 square kilometres, and according to Spain, which also claims its sovereignty over the Territory, it is 4.8 square kilometres. In 2004, Gibraltar observed the anniversary of 300 years under British rule. The 2005 census of Gibraltar assessed the Territory's civilian population at 28,779.

II. Constitutional, legal and political issues

2. In accordance with the Constitution put in force as of 2 January 2007, the Governor of Gibraltar, who represents the United Kingdom and who, with the Council of Ministers, constitutes the Government of Gibraltar, shall be responsible for external affairs, defence, internal security, including police, and certain appointments as are conferred on him by the Constitution. Following an election, the Governor, acting in his discretion, shall appoint as Chief Minister the elected member of the Parliament who in his judgement is most likely to command the greatest measure of confidence among the elected members of the Parliament. The Ministers other than the Chief Minister shall be appointed by the Governor, acting in accordance with the advice of the Chief Minister, from among the elected members of the Parliament (see www.gibraltar.gov.gi).

3. The last general elections in Gibraltar were held on 27 November 2003. The incumbent Gibraltar Social Democratic Party obtained 51 per cent of the vote, followed by the Gibraltar Socialist Labour Party, which, in alliance with the Liberal Party, obtained 40 per cent of the vote. Peter Caruana, leader of the Gibraltar Social Democratic Party, was reappointed Chief Minister of Gibraltar. Joseph Bossano continues as Leader of the Opposition. The Parliament must be dissolved by 23 November 2007 in preparation for the next general election.

Recent developments

4. The United Kingdom's White Paper entitled "Partnership for Progress and Prosperity: Britain and the Overseas Territories", presented to Parliament in March 1999, spoke of each Territory's need for a constitutional framework to suit its own circumstances and stated that suggestions from Overseas Territory Governments for specific proposals for constitutional change would be considered carefully.[2] In June

[1] The information contained in the present paper has been derived from information transmitted to the Secretary-General by the administering Power under Article 73 *e* of the Charter of the United Nations and from information provided by the Government of Spain and other published sources, including those of the territorial Government.

[2] "Partnership for Progress and Prosperity: Britain and the Overseas Territories", White Paper submitted to the House of Commons on 17 March 1999 by the United Kingdom Secretary of State for Foreign and Commonwealth Affairs; reproduced in A/AC.109/1999/1, annex.

1999, Gibraltar's House of Assembly set up a Select Committee on constitutional reform and on 27 February 2002 formally adopted a report on the matter. The Chief Minister said that the object of the exercise had been to achieve a constitution that "maximized self-government", in the language of the United Nations decolonization proposals, and modernized domestic institutions to reflect that.

5. The Chief Minister submitted the constitutional reform proposals formally to the Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom on 22 December 2003 and suggested that the two meet informally to discuss the proposals and the way forward. The Secretary of State acknowledged the importance of those proposals to Gibraltar and said that they would receive the most careful consideration. Negotiations began in 2005 aimed at modernizing Gibraltar's Constitution in a way that Gibraltar would remain British but in a non-colonial relationship with the United Kingdom. The discussions were held exclusively between the United Kingdom and a cross-party representation from Gibraltar, led by the Chief Minister and including the leader of the Opposition, Joseph Bossano.

6. Meanwhile, in June 2004, after a 10-year campaign to exercise the right to vote in European elections, Gibraltarians, considered by the administering Power to be part of the South West England region for electoral purposes, took part in the European Parliamentary Elections.

7. On 27 March 2006, Jack Straw, the then Foreign Secretary of the United Kingdom, announced in a written statement to the British House of Commons that the details of a new Constitution had been agreed between the United Kingdom and Gibraltar delegations. On 30 November 2006, the Gibraltar constitutional referendum was held and the new Constitution was approved by 60.24 per cent of those who voted (60.40 per cent), while 37.75 per cent voted against and the remainder returned blank votes.[3]

8. In his letter dated 22 January 2007 addressed to the Secretary-General (A/61/710), the Permanent Representative of the United Kingdom to the United Nations informed that the new Constitution of Gibraltar was given effect by an Order-in-Council on 14 December 2006 and that the new Constitution came into force on 2 January 2007. Noting that it recognized the right of self-determination of the Gibraltarian people, the Permanent Representative said that the new Constitution provided for a modern relationship between Gibraltar and the United Kingdom that was not based on colonialism.

9. Spain, however, stated that the entry into force of the new Constitution was "an improvement and a modernization of its government that in no way affect the international capacity of Gibraltar" and that the "amendment of the Constitutional Decree was a reform of the colonial regime, which remains unaltered".[4] The Spanish Government further stated that the 30 November 2006 referendum was "a local initiative which represents the democratic expression of the inhabitants of Gibraltar to give them a more efficient government system" and that it did not affect "in any way the pending decolonization process of Gibraltar, to which the principle of self-determination does not apply".[4]

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[3] Information provided by the administering Power, January 2007.

[4] Information provided by the Government of Spain, March 2007.

10. As mentioned in previous working paper, the negotiations between the United Kingdom and Spain on the subject of Gibraltar had led to the establishment in 2004 of a forum of dialogue on Gibraltar. A joint press release by the Spanish Ministry for Foreign Affairs, the British Foreign and Commonwealth Office and the Government of Gibraltar dated 14 December 2004 stated: "Accordingly and without prejudice to their respective positions, the Governments of Spain and the United Kingdom and Gibraltar now confirm the establishment of a new three-sided Forum for dialogue on Gibraltar, separate from the Brussels Process."[5]

11. The joint press release further stated, inter alia, that in this Forum, "without prejudice to their constitutional status (including the fact that Gibraltar is not a sovereign independent State), each of the three parties will have its own, separate voice and each will participate on the same basis. Any decisions or agreements reached within the Forum must be agreed by all three participants. If the three parties wish to take a decision on an issue in the Forum where formal agreement would properly be between the United Kingdom and Spain, it is understood that the United Kingdom will not agree thereto without the Government of Gibraltar's consent."

12. Since the establishment of the Forum, there have been six rounds of discussions. On 18 September 2006, the Minister for Foreign Affairs and Cooperation of Spain, the Minister for Europe of the United Kingdom, and the Chief Minister of Gibraltar met in Cordoba, Spain, and issued a communiqué containing a package of agreements aimed at enhancing the economic and social development of both Gibraltar and the surrounding region, in particular the Campo de Gibraltar. The participants stated in the ministerial communiqué of the Forum that those agreements had no implications whatsoever regarding sovereignty and jurisdiction, and any activity or measure undertaken in applying them, or as a consequence of them, was understood to be adopted without prejudice to the respective positions on sovereignty and jurisdiction. The communiqué stated that the Government of Gibraltar understands and accepts that references to sovereignty in the communiqué are bilateral to the United Kingdom and Spain. Some of the agreements reached are reflected in sections III and IV below.

13. The latest round of the Forum took place for the first time in Gibraltar on 26 March 2007.[6]

14. The positions of the administering Power, the territorial Government and the Government of Spain are reflected in section VI of the present report.

III. Economic conditions

A. General

15. Gibraltar has no known natural resources and lacks agricultural land. Prior to 1980, the economy was largely dependent on Ministry of Defence expenditures, but with the downsizing of the military base, the economy has increasingly become focused on tourism and the provision of financial services, such as banking, insurance, shipping and portfolio management. The currency of Gibraltar is the

[5] Joint Communiqué of 16 December 2004.

[6] See www.panorama.gi, 26 March 2007.

pound sterling. According to the administering Power, the gross domestic product (GDP) of Gibraltar in 2003-2004 was £560.1 million, and per capita GDP was £19,552. Inflation in 2006 was running at an annual rate of 2.3 per cent.

16. In his 2007 New Year's message, the Chief Minister stated that Gibraltar's economy had had another excellent year, with an estimated growth rate of around 7 per cent. Employment levels had remained at record highs, the finance centre continued to mature, develop and grow and the gaming industry had continued to prosper despite various external challenges, particularly the criminalization of online gambling in the United States of America. The Chief Minister stated that the private sector economy continued to perform very well and the economy as a whole had continued to grow by around 7 per cent annually. The territorial Government's overall revenue for 2006-2007 was estimated at £250 million and overall expenditure of £232.7 million, registering a surplus of £17.3 million. Government cash reserves stood at the all-time high of £93.6 million as at 31 March 2006.[7]

B. Public finance

17. According to the territorial Government, revenue credited to the Consolidated Fund for the year ending on 31 March 2006 was estimated at £197.6 million, and departmental expenditure amounted to £179.6 million. The main sources of Consolidated Fund revenues were income tax, which totalled £112 million, followed by duties, taxes and other receipts amounting to £38.2 million. The main Consolidated Fund areas of expenditure for 2005-2006 were as follows: health and civil protection, £34.3 million; environment, roads and utilities, £24.5 million, education and training, £21.1 million; and social and civic affairs, £19.4 million.

18. Income tax is charged for the year of assessment running from 1 July in one calendar year to 30 June in the next on the basis of the income of the preceding year, except for income from employment or pension, which is charged on the basis of the income for that current year. The income tax rates applicable to individuals resident in Gibraltar range from 17 per cent on the first £4,000 of taxable income to 42 per cent after the first £13,000. The corporate tax rate is 35 per cent for utility companies. Other companies are taxed at very low rates and, in practice, the offshore sector remains untaxed. The European Commission found that the corporate tax reform in Gibraltar constituted a scheme of State Aid incompatible with the common market and referred the case to the Court of First Instance of the European Communities. A final decision of the Court is expected in the near future.

19. According to the administering Power, the capital projects investment programme continues to enhance and modernize all physical aspects of facilities in Gibraltar across a wide range of areas, including affordable housing, the provision of health care, education, improved infrastructure and recreational facilities. The estimated capital investment in private development for 2006 was approximately £169 million.

20. In addition to this, a number of public, private and joint European Union (EU) funding projects continue as in other years. These include restoration and urban regeneration of Gibraltar's heritage asset; improving the urban environment; infrastructure schemes to improve access for tourism infrastructure projects that

[7] See www.gibraltar.gov.gi/gov.

include upgrading and improving sites; business investments including preferential access to seed and EU funding schemes for small and medium enterprises and the self-employed; nature conservation projects; measures to protect and enhance the Territory's natural habitat and biodiversity; development of a new public bus service, with particular emphasis on its environmental benefits; and the development of improved facilities for handling waste oils in the shipping sector to make the port more attractive to ship calls by offering improved services and making it more environmentally friendly.

21. According to the Spanish Government, as a result of the agreements reached during the 18 September 2006 ministerial meeting of the Forum for Dialogue on Gibraltar, Spain has invested about €20 million in customs and police facilities in La Linea.

C. Trade

22. In 2005, total imports and exports (excluding petroleum products) amounted to £303 million (up from £292 million in 2004) and £110 million (up from £108 million in 2004), respectively. Some 22 per cent of Gibraltar's non-fuel imports originated from the United Kingdom. Other major sources of imports included Spain, the Netherlands, France, Japan and the United States.

D. Banking and finance

23. Gibraltar's international financial services sector stems from the enactment of the Companies (Taxation and Concessions) Ordinance in 1967, which made provision for a special tax regime for offshore companies. The Gibraltar Finance Centre, established in 1997, is charged with the marketing and promotion of financial services, input into strategic planning including the various international initiatives, product development, and liaison with the private sector and the regulator. At the end of 2006, there were 18 banks authorized to conduct banking business in Gibraltar.

24. A report issued in June 2000 by the Organization for Economic Cooperation and Development (OECD) included Gibraltar in a list of 35 jurisdictions that met the technical criteria for being tax havens. Gibraltar, together with 29 other jurisdictions, won the favour of the Organization for Economic Cooperation and Development (OECD), as a result of the diligence reflected in the OECD progress report on its project on harmful tax practices. OECD subsequently declared, on the basis of its commitment to sign tax information exchange agreements, that it would not be included in its next list of uncooperative tax havens. However, Gibraltar has no internal legislation to obtain information to respond to a request for exchange of information for tax purposes because it has no tax information exchange agreements in force. In February 2005, the administering Power announced its decision to abolish the Gibraltar exempt company tax regime by 2010.

25. The newly proposed Financial Services Commission Act 2007 is expected to be supported by the Gibraltar Parliament and is currently being discussed. The Act provides for an independent review of the supervisory activities of the Commission at least once every four years. Furthermore, the Act replaces the Governor with a

Minister as the person to bring the Act into effect. The Finance Minister also replaces the Governor as the person with power to appoint members.

26. Gibraltar's efforts to ensure successful regulatory systems have met with international recognition from OECD and others, and it is generally recognized that Gibraltar is among the most stringently policed jurisdictions with enforcement to appropriate high standards.

27. According to Spain, the tax system in Gibraltar has enabled the gross average investment per Gibraltarian in Spain during the period 2002-2005 to be of €988 per year. This figure is 7.5 times larger than the annual average investment per citizen of any of the EU member States in Spain.

E. Transportation, communications and utilities

28. According to the administering Power, arrivals in Gibraltar are by land, comprising mainly day visitors arriving from Spain; by air, primarily from the United Kingdom; and by sea, comprising ferry arrivals from Morocco and day-trip arrivals from cruise ships. Visitor arrivals in 2006 included 7,815,661 arrivals by land; 210,799 cruise visitor's arrivals; 9,958 ferry arrivals; and 164,395 arrivals by air.

29. Regarding road transportation in and out of Gibraltar as a result of the Cordoba agreements, Spain put in service two lanes in both directions and red and green channels, for both people and vehicles, at the fence/frontier between Spain and Gibraltar on 20 December 2006. However, customs and police checks will still be necessary, since Gibraltar does not belong to the EU customs union and the United Kingdom (and thus Gibraltar) is outside the so-called Schengen area for external borders purposes.[8]

30. According to the administering Power, there are regular airline services linking Gibraltar to several United Kingdom airports. A new Gibraltar-based airline intends to offer weekly flights to the United Kingdom and Ireland from mid-2007 onwards. The ministerial statement on Gibraltar Airport, as an outcome of the Forum for Dialogue, will replace the December 1987 Joint Declaration on the Airport. The joint ministerial statement, once it is fully applied, will be the trigger for removal of the suspension of the application to Gibraltar of the European Commission regulation on civil aviation from which the airport of Gibraltar is presently excluded. A permanent joint liaison committee for the participants will be established as a forum to consider at a technical level any problem or issue relating to the functioning of the arrangements of the Airport. Since 16 December 2006, Spain has lifted its previous veto on direct flights between Gibraltar and other European airports.[9]

31. The United Kingdom Government is responsible for all international obligations including aviation safety and security relating to the Gibraltar Airport. As announced by the Tourism Minister, a new air terminal will be completed within the next two years. A new road structure to serve the Land Frontier with Spain,

[8] Communiqué of the Ministerial meeting of the Forum of 18 September 2006.

[9] Information provided by the Government of Spain.

without having to cross the airport runway, is being developed in parallel and will be ready by 2008.[10]

32. As the Strait of Gibraltar is a principal water route between the Mediterranean Sea and the rest of the world, Gibraltar is used as a port by many long-distance liners and cargo ships. Plans exist to establish and develop business links between Tangier, Morocco, and Gibraltar since the maritime leisure dimension of cruise calls and yachting is the core business for both ports.[11]

33. The joint ministerial statement of the Forum for Dialogue on Gibraltar made on 18 September 2006 declared that in order to both address the current limitation on the quantity of telephone numbers in Gibraltar accessible from and through the Spanish network, and also enable roaming agreements between networks in Spain and Gibraltar for mobile telephones, telephone calls from Spain to Gibraltar would be channelled using the technical procedures for international direct dialling recommended by the International Telecommunications Union for all States and Territories, including the Territory of Gibraltar. These agreements became operational on 10 February 2007.

F. Tourism

34. The total number of visitors that arrived in Gibraltar in 2005 was 7.8 million, compared to 7.6 million in 2004. There were 58,796 hotel arrivals in 2005, a slight decrease over 2004, during which 61,710 hotel arrivals were registered. In 2005, there were a total of 121,589 daily hotel room bookings, registering an occupancy rate of 68.6 per cent.

IV. Social conditions

A. Labour

35. Recent statistics released by the territorial Government placed the number of employees in Gibraltar as of October 2005 at 16,874, compared to 15,994 at the same period in 2004. Of the total, 9,806 were male and 7,068 female. The distribution of persons employed by the five largest sectors was as follows: wholesale and retail trade, 2,693; public administration and defence, 2,160; construction, 1,861; real estate and business activities, 1,846; and financial intermediation, 1,440. In his June 2006 budget speech to Parliament, the Chief Minister stated that the number of jobs in the economy was at an all-time high in 2006 and still growing. The rate of employment within the economically active Gibraltar population is estimated at 97 per cent.[12]

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[10] Information provided by the administering Power.

[11] See www.gibraltar.gi, 6 February 2006.

[12] Chief Minister's Budget Speech, June 2006, see www.chronicle.gi/Features/Caruana%20Budget/Caruana%20Statement.htm.

B. Human rights

36. Information on fundamental rights and freedoms granted by the Gibraltar (Constitution) Order of 1969 is contained in the 2005 working paper (A/AC.109/2005/11, para. 28). The right of individual petition under the European Convention on Human Rights was accepted by the United Kingdom on a permanent basis for Gibraltar on 14 January 2006.[13]

C. Social security and welfare

37. According to the administering Power, a settlement of the issue of the pension of former pre-1969 Spanish workers in Gibraltar, which are the responsibility of the United Kingdom and are paid exclusively by the United Kingdom, was achieved under the joint ministerial accord of 18 September 2006. The agreement allowed for a solution that would benefit some 5,700 people who would be paid an uprated pension by the United Kingdom as from 1 April 2007 and who would additionally be entitled to a lump sum if they agreed to leave the Gibraltar Social Insurance Fund and join a new scheme set up by the United Kingdom. Details of the contributory schemes of the Social Security system are contained in A/AC.109/2001/10, paragraph 40.

D. Public health

38. The Gibraltar Health Authority is the organization responsible for providing health care in Gibraltar. It operates a group practice medical contributory scheme and gives registered persons access to free medical treatment (for a description of the available medical facilities, see A/AC.109/2001/10, paras. 42 and 43). According to the administering Power, the expenditure of the Gibraltar Health Authority for the period from 1 April 2005 to 31 March 2006 was £51.62 million. The new 166-bed St. Bernard's Hospital at Europort, which opened in February 2005, provides a comprehensive outpatient service and inpatient treatment for acute medical and surgical cases.

E. Education

39. The Department of Education and Training continues to be in charge of public education in Gibraltar. Expenditure on education at the end of March 2006 was £20.5 million. A programme of major improvements to Government schools at a cost of £1 million was completed in 2006. As at the end of 2006, there were a total of some 5,300 children enrolled in Government schools, including Government nurseries. There is free compulsory education for all entitled children between the ages of 5 and 15. There are 13 primary schools — 11 Government-run, 1 private school and 1 services school — with a total of 3,195 students enrolled. There are also four single-sex secondary schools — two Government-run schools, with a total of 2,061 students, and two private schools. There is also a technical and vocational college with 390 students enrolled. The number of teachers employed in Gibraltar during the 2006-2007 academic year was 343. In 2006, 497 Gibraltarians were

[13] See www.fco.gov.uk/servlet/.

pursuing higher education studies in the United Kingdom, funded by the territorial Government, which covers the cost of university and college tuition fees.[14]

40. On 18 September, in the joint ministerial statement, the Forum for Dialogue on Gibraltar welcomed the proposal of the Spanish Government to open an Instituto Cervantes in Gibraltar. The Gibraltar Government agreed to make suitable premises available for it.

F. Crime and crime prevention

41. Law enforcement in the Territory is the responsibility of the Royal Gibraltar Police. According to the administering Power, a total of 1,054 persons were arrested for minor offences, such as those related to liquor, disorderly conduct and immigration violations from January to December 2006. During the same period, 1,210 persons were arrested for serious crimes, such as those related to violence against the person, sexual offences, burglary and drugs.[15]

V. Consideration by the United Nations

A. Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

42. A representative of Spain attended the Pacific regional seminar on the implementation of the Second International Decade for the Eradication of Colonialism, held at Yanuca, Fiji, from 28 to 30 November 2006, and made a statement.

43. The Special Committee discussed the question of Gibraltar at its 5th meeting, on 6 June 2006 (see A/AC.109/2006/SR.5), and had before it the 2006 working paper concerning the Territory (A/AC.109/2006/9). Statements were made by the representative of Spain, the Chief Minister of Gibraltar, Peter Caruana, and the Leader of the Opposition in Gibraltar, Joseph Bossano. On the proposal of the Chairman, the Committee decided to continue consideration of the question at its next session and, in order to facilitate consideration of the question by the Special Political and Decolonization Committee (Fourth Committee), to transmit the relevant documentation to the General Assembly.

B. Special Political and Decolonization Committee (Fourth Committee)

44. The Fourth Committee considered the question of Gibraltar at its 4th meeting, on 4 October 2006 (see A/C.4/61/SR.4). At that meeting, statements were made by the representative of Spain, Juan Antonio Yañez-Barnuevo, the Chief Minister of Gibraltar, Peter Caruana, and the petitioner, Joseph Bossano, Leader of the Opposition in Gibraltar. At its 3rd meeting, on 3 October, the Fourth Committee

[14] Information provided by the administering Power, March 2007.

[15] Information provided by the administering Power, 15 January 2007.

heard a statement by the representative of the United Kingdom regarding the 10 Territories that are on the United Nations list of Non-Self-Governing Territories administered by the United Kingdom (see A/C.4/61/SR.3). At its 7th meeting, on 11 October, the Fourth Committee adopted a draft decision on the question of Gibraltar (A/C.4/61/L.6) without a vote.

C. Action by the General Assembly

45. At its 79th plenary meeting, on 14 December 2006, the General Assembly, on the recommendation of the Fourth Committee, adopted a decision (61/522) without a vote. The decision reads as follows:

> "The General Assembly, recalling its decision 60/525 of 8 December 2005 and the statements agreed to by the Governments of Spain and the United Kingdom of Great Britain and Northern Ireland in Brussels on 27 November 1984, and in Madrid on 27 October 2004, and noting the establishment, pursuant to the latter, of the tripartite Forum for Dialogue on Gibraltar, separate from the Brussels Process, under the statement made jointly by the Governments of Spain, the United Kingdom and Gibraltar on 16 December 2004:
>
> (a) Urges both Governments, while listening to the interests and aspirations of Gibraltar, to reach, in the spirit of the 27 November 1984 statement, a definitive solution to the question of Gibraltar, in the light of relevant resolutions of the General Assembly and applicable principles, and in the spirit of the Charter of the United Nations;
>
> (b) Welcomes the successful outcome of the first package of measures concluded in the tripartite Forum for Dialogue on Gibraltar."

VI. Future status of the Territory

A. Position of the administering Power

46. In her statement at the 3rd meeting of the Fourth Committee, held on 3 October 2006, at the sixty-first session of the General Assembly (see A/C.4/61/SR.3), the representative of the United Kingdom said the consultation process between her Government and the 10 Non-Self-Governing Territories under its administration continued through annual meetings of the Overseas Territories Consultative Council, a forum for dialogue between democratically elected chief ministers from the Territories and British Government ministers. The agenda for the November 2006 meeting in London would cover a range of issues, including the relationship between the United Kingdom and the Territories, constitutional modernization, good governance and aspects of the United Kingdom's international obligations.

47. Noting that the overseas Territories had been invited to review and propose ways of modernizing their Constitutions, she said that the negotiations on the new constitution for Gibraltar had been completed and the agreed text would soon be put to the people of Gibraltar in a referendum.

48. In supporting its overseas Territories, she pointed out, her Government focused on increasing local capacity and promoting sustainable development. Its funding contributed to improving governance and promoting political and economic transparency; ensuring security; reducing vulnerability to natural and non-natural disasters; encouraging more diversified economic development; and supporting environmental management. Her Government also encouraged the Territories to strengthen relations with the European Commission in order to improve access to trade and to European economic and development aid.

49. In his letter of 22 January 2007 (A/61/710), the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations informed the Secretary-General that a new Constitution for Gibraltar was given effect by an Order-in-Council on 14 December 2006 and that it came into force on 2 January 2007. The letter further said that the draft text of

> "this Constitution was put to the people of Gibraltar in a referendum on 30 November, and approved by them. This followed a unanimous decision by the Gibraltar House of Assembly to hold a referendum. The United Kingdom regards the referendum as democratic, lawful and entirely proper. Geoff Hoon, the Minister for Europe, also confirmed, on 4 July 2006, that the Government of the United Kingdom regards the referendum as an exercise of the right of self-determination by the people of Gibraltar."

50. The letter went on to say that

> "The new Constitution recognizes the right of self-determination of the Gibraltarian people. The realization of that right must be promoted and respected in conformity with the provisions of the Charter of the United Nations and any other applicable international treaties. At the same time, the United Kingdom does not believe that the principle of territorial integrity is applicable to the decolonization of Gibraltar. British sovereignty of Gibraltar remains undiminished, and the United Kingdom retains its full international responsibility for Gibraltar's external relations and defence, and as the Member State responsible for Gibraltar in the European Union. For nationality purpose, Gibraltar will remain listed as a British Overseas Territory in the British Nationality Act of 1981, as amended by the British Overseas Territory Act 2002."

51. Noting in the letter that the new Constitution provides for a modern relationship between Gibraltar and the United Kingdom, the Permanent Representative said, "I do not think that this description would apply to any relationship based on colonialism. It has also been the long-standing view of the United Kingdom that none of its remaining overseas Territories, including Gibraltar, should remain on the United Nations list of Non-Self-Governing Territories, despite the different circumstances affecting Gibraltar (namely the stated position of the United Kingdom that independence is not an option without Spanish consent, by virtue of the Treaty of Utrecht). However, we regard the criteria used by the United Nations Special Committee on Decolonization as outdated, and believe that the criteria fail to take account of the way that relationships between the United Kingdom and its overseas Territories have been modernized, in a way that is acceptable to both parties. The United Kingdom does not, therefore, engage formally with the Committee in seeking the de-listing of any of its territories."

B. Position of the territorial Government

52. In his statement at the first meeting of the Gibraltar Parliament since the 2006 Constitution came into effect, convened on 26 February 2007, Chief Minister Peter Caruana noted that, for the first time, the United Kingdom had recognized that the people of Gibraltar enjoyed in their new Constitution the right of self-determination in terms of the Charter of the United Nations. Furthermore, he said, the United Kingdom had recognized and acknowledged that the Territory's referendum in November 2006 constituted an exercise of that right of self-determination. "In consequence, Gibraltar now enjoys a modern and mature constitutional relationship with the United Kingdom which is not based on colonialism. We are thus effectively decolonized."[7]

53. The Chief Minister stated that "since this House is now, formally, a Parliament and not an assembly, and is now called the Gibraltar Parliament, it is right that the precincts of the House should now be know as 'Parliament House' and that its members should now be known as Members of Parliament".[7] Noting that public finance and justice are the principal areas where direct ministerial responsibility is imposed on the territorial Government, which is now constitutionally responsible for all matters except external affairs, defence and certain aspects of policing and civil service matters, the Chief Minister said that the territorial Government had announced the creation of two new Ministries, the Ministry of Finance and the Ministry of Justice and Home Affairs. He further noted that for the time being, the Chief Minister assumes ministerial responsibility for justice and retains responsibility for police issues, immigration residence and personal status. He also said that in due course, the responsibility for civil contingency, the fire brigade, the prison and civic rights would become the responsibility of a single Minister for Justice and Home Affairs.

54. Earlier, the Chief Minister had made a statement at the 5th meeting of the Special Committee of 24 on 6 June 2006 (see A/AC.109/2006/SR.5) and the Fourth Committee on 4 October 2006 (see A/C.4/61/SR.4), impressing upon them Gibraltar's aspirations for self-determination. At the same meeting of the Fourth Committee, the leader of the Opposition in the Parliament of Gibraltar also made a statement.

55. Speaking to the Fourth Committee, the Chief Minister said that there could be no doubt that Gibraltar was a normal case of decolonization in accordance with the inalienable right to self-determination of its people. Self-determination was the only principle applicable in the decolonization process under the Charter of the United Nations and international legal instruments, and that it was an unsustainable misconception to seek to apply the principle of territorial integrity to any process of decolonization. Noting that his delegation did not agree with Spain's position that the principle of territorial integrity had priority over the principle of self-determination, he said that decolonization and sovereignty were different questions.

56. The Chief Minister stated that following negotiations with the United Kingdom, a new Constitution had been drafted that maximized Gibraltar's self-government to the point beyond which there could only be a constitution for Gibraltar's total independence. Pointing out that significant political and constitutional developments affecting Gibraltar had affected the decolonization process, he said that, in the view of his delegation, decolonization should no longer

concern the United Nations in the case of Gibraltar. The non-colonial relationship under the Constitution would bring about the decolonization of Gibraltar, although sovereignty was formally vested in the United Kingdom and the dispute over Spain's sovereignty remained.

57. The Chief Minister praised the work of the Forum for Dialogue on Gibraltar, in which all the parties concerned had worked diligently to settle long-standing issues such as the enhanced use of the Gibraltar airport, telecommunications, border fluidity and pension rights of cross-border Spanish workers. Welcoming the political effort of the Government of Spain, he said the Forum had demonstrated that Gibraltar and Spain could engage each other in dialogue without prejudice to the issues of sovereignty and self-determination.

58. The leader of the Opposition said that he did not agree with the position of the United Kingdom that the decolonization of Gibraltar should not include the participation of the United Nations. However, faced with no other option, he said that Gibraltar had arrived at a bilateral agreement with the United Kingdom, culminating in the new Constitution. He also said that the United Kingdom's opinion that the relationship with Gibraltar under the new Constitution was no longer colonial was untenable. Nor did he agree with the territorial Government that the Committee's decolonization criteria were outdated or unilaterally invented by the Special Committee. He emphasized that the only principle applicable to decolonization was self-determination and that if the new Constitution fell short of the requirements for decolonization, it could and should be amended, with the participation of the United Kingdom, Gibraltar and the United Nations.

C. Position of the Government of Spain

59. In his letter of 29 November 2006 addressed to the Chairman of the Special Committee, the Permanent Representative of Spain to the United Nations stated that the referendum to be held on 30 November on the new Constitution in Gibraltar was a purely local initiative that concerned only the authorities of Gibraltar (see A/61/604). The letter further pointed out that "although the United Kingdom Government, according to an answer given on 4 July 2006 to a parliamentary question, recognizes the referendum as an exercise of a presumed right of self-determination of the Gibraltarian people, it has also stated that this right is constrained by article X of the Treaty of Utrecht — which gives Spain the right of refusal should the United Kingdom decide to renounce its sovereignty over Gibraltar — and by the purposes and principles of the Charter of the United Nations. The United Kingdom had also affirmed that the new Constitution gave Gibraltar greater control over its internal affairs." On those grounds, Spain maintained that what had been recognized to Gibraltar by the United Kingdom was only a right of self-determination restricted to its purely internal dimension, with no consequences in the external context.

60. Speaking at the 4th meeting of the Fourth Committee on 4 October 2006 (see A/C.4/61/SR.4), the Permanent Representative of Spain said that neither the agreements of the Forum for Dialogue on Gibraltar of 18 September 2006 nor the constitutional reform in Gibraltar alter in any way the Spanish position on the dispute between Spain and the United Kingdom over Gibraltar nor the colonial nature of Gibraltar, nor should they imply any change in the doctrine of the United

Nations with respect to the decolonization of the Territory. Decolonization therefore had to be the result of bilateral negotiations between Spain and the United Kingdom in which the interests and aspirations of the Gibraltarians would be taken into account, and could not be a consequence of the exercise of a presumed right of self-determination by the Gibraltarians. However, he hoped that the agreements of Cordoba and the satisfactory conclusion of the constitutional reform process would usher in a climate conducive to a solution to the dispute between Spain and the United Kingdom over Gibraltar. He also stated that the dispute on sovereignty and the pending process on decolonization of Gibraltar are two inseparable issues.

61. The Spanish Secretary of State for Foreign Affairs declared to the media on 6 March 2007 that Gibraltar continued to be a non-self-governing British dependent Territory and that the reform of the United Kingdom Order-in-Council, which granted Gibraltar a new Constitution, had not altered the international status of Gibraltar, nor the process of decolonization, which, in accordance with the mandate of the United Nations, could only come about by means of a negotiation between Spain and the United Kingdom. Therefore, it could not be claimed that with the reform of the constitutional Order-in-Council a "de facto" decolonization was possible.[9]

62. As for the Forum, the Permanent Representative said that it had resulted in the conclusion of specific agreements on the use of the airport, the pensions of Spanish workers living in Gibraltar and the development of telecommunications and road infrastructures. He further noted that those agreements had been concluded without prejudice to the respective positions on sovereignty, including the Territory in which the airport was located, and that it had been acknowledged that the question of sovereignty was to be addressed in bilateral negotiations between Spain and the United Kingdom.

D. United Kingdom-Spanish negotiations

63. There were no bilateral negotiations on Gibraltar during 2006 in the so-called Brussels Process, which is separate from the Forum for Dialogue on Gibraltar. According to Spain, the Spanish Minister for Foreign Affairs, Miguel Angel Moratinos, stated in his letter dated 28 March 2006 to the then British Foreign Secretary, Jack Straw, that the Brussels Process was fully in force and invited the United Kingdom to continue, without further delay, these negotiations.

E. Forum for Dialogue on Gibraltar

64. Since the establishment of the Forum for Dialogue on Gibraltar in 2004, there have been six rounds of discussions among the representatives of the United Kingdom, Spain and Gibraltar. On 18 September 2006, the Minister for Foreign Affairs and Cooperation of Spain, the Minister for Europe of the United Kingdom, and the Chief Minister of Gibraltar held the first ministerial meeting in Cordoba and issued a communiqué that contained a package of agreements aimed at enhancing the economic and social development of both Gibraltar and the surrounding region, in particular the Campo de Gibraltar. The agreements covered such areas as pensions for pre-1969 Spanish workers in Gibraltar, the Gibraltar airport, and telecommunications, as reflected in sections III and IV of the present report. The

latest round of the Forum took place for the first time in Gibraltar on 26 March 2007. The participants reviewed the implementation of the agreements reached in Cordoba, and expressed satisfaction at the high degree of progress to date. In a communiqué issued at the end of the meeting, the participants reaffirmed their commitment to the Forum and agreed to meet again to advance work of pending issues in the near future.[16]

F. United Kingdom-Gibraltarian discussions

65. The Government of the United Kingdom has reiterated on several occasions that it remains committed to considering proposals for constitutional change in its Territories. Following the negotiations on the new Constitution for Gibraltar, the agreed text was put to the people of Gibraltar for approval in a referendum held on 30 November 2006, and was given effect by an Order-in-Council made on 14 December by the Privy Council. The draft constitution was approved and subsequently put in force on 2 January 2007. The Governments of the United Kingdom and Gibraltar recognized that the new Constitution provided for a modern and mature constitutional relationship between the two sides, which is not based on colonialism. At the same time, it was also recognized that British sovereignty of Gibraltar remains undiminished and that the United Kingdom retains its full international responsibility for Gibraltar's external relations and defence, as the Member State responsible for Gibraltar in the European Union.

[16] www.panorama.gi, 27 March 2007.